

REMARKS

By this Amendment, applicants have:

- (1) amended claim 1 to more specifically recite what is meant by "organic stabilizer" (supported at page 12, line 27 to page 13, line 2); and
- (2) amended claim 1 to recite that the oil phase comprises a liquid oil (supported, for example, at page 4, line 28) which provides the liquid with a defined viscosity (supported for example at page 4, line 31 to page 5, line 2).

The definition of the "organic stabilizer" is intended to overcome the rejection under 35 USC §112, first paragraph, and it is respectfully requested in this regard that this rejection be withdrawn in view of the amendments.

The amendment further defining the structured oil phase is intended to highlight the distinction between the liquid (whether structured to have high viscosity or not) oil phase of the subject invention and the pre-hardened hydrogel polymer particles of the newly cited Tsaur et al. patent.

More specifically, at page 7 of the Office Action, the Examiner rejects claims of the subject invention under 35 USC §103 over Glenn, Jr. (U.S. Patent No. 6,080,708) in view of U.S. Patent No. 5,759,969 to Tsaur.

While recognizing that Glenn ('708 patent) does not disclose the step of passing structured oil-in-water predisposition through a screen (see page 8, last paragraph of Office Action), the Examiner states it would have been obvious to do so because Tsaur et al. (969 patent) discloses passing cleansing composition comprising hydrogel particles of specific size through a screen. U.S. Patent No. 5,004,598 to Lochhead, like the '708 patent, relates to oil-in-water dispersions, and fails to disclose passing such

dispersions through a screen to reduce particle size of dispersed oil. It is cited to show, however, that it would have been obvious to use compositions with little or no surfactants since, unlike compositions of '708 to Glenn, compositions of the subject invention comprise less than 1% anionic. For purposes of the discussion below, however, the distinction over either '708 or U.S. Patent No. 5,004,598 ('598) is the same.

Specifically, the fundamental flaw in the Examiner's reasoning is that, because '969 Tsaor patent discloses passing hydrogel particles through a screen, it would be obvious to also pass oil-in-water emulsions through screens to reduce size of oil particles.

The hydrogel polymers of the Tsaor patent, however, when formed in the aqueous compositions containing them, form pre-hardened hydrogel noodles (column 5, line 12). These pre-hardened noodles can then either be broken by shear or, as occurs in Example 15, be passed through a screen. Indeed, the screen is used because it is clear that a screen can break down a hardened noodle which is passed through such screen.

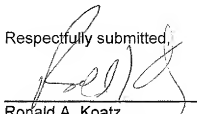
In the subject application, however, the oil is in the form of droplets forming the oil and water emulsion. Such emulsion is a liquid and, although the oil is structured, it is not clear whether or not the structured oil would be malleable when passing through a screen. In short, it is not obvious at all that oil particles in an emulsion, when passed through a screen, would reduce in size because it is not clear whether they would "break" or "deform" to "squeeze" through.

It cannot be said that it would be obvious to pass an emulsion through a screen to reduce particle size of an oil merely on the basis of passing a pre-hardened hydrogel through a screen. This might be obvious in hindsight but, as the Examiner knows, such hindsight reconstruction is prohibited by the patent laws.

As indicated, to highlight the fact that the liquid phase of the invention is not a prehardened hydrogel, applicants have amended the claim to recite liquid oil and to show that the structurant may raise viscosity (of the liquid), but does not form a pre-hardened particle.

In view of the amendments and discussion above, it is respectfully requested that the Examiner reconsider and withdraw all rejections of the claims and that claims as amended, be allowed.

Respectfully submitted,



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